

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ROHAN JOHNSON,

Petitioner,

- against -

ROBERT N. DAVOREN COMPLEX,

Respondent.
-----X

ROSLYNN R. MAUSKOPF, United States District Judge.

MEMORANDUM AND ORDER

15-CV-890 (RRM)

BACKGROUND

On February 17, 2015, Petitioner Rohan Johnson filed a writ of habeas corpus under 28 U.S.C. § 2254, seeking to challenge an ongoing criminal action in Queens County and to be released from custody. (*See* Pet. (Doc. No. 1).) On March 21, 2016, by written decision, the Court dismissed the petition because Johnson had been neither convicted nor sentenced. (*See* Mem. & Order (Doc. No. 35).) Judgment entered the same day. (*See* Judgment (Doc. No. 36).)

Prior to the dismissal of his case, Johnson filed three notices of pendency in the County Clerks Offices in Queens, Kings and Bronx Counties, each of which lists numerous properties in which Petitioner Johnson claims an interest. (*See* Queens Cty. Not. (Doc. No. 29); Kings Cty. Not. (Doc. No. 30); Bronx Cty. Not. (Doc. No. 31).)¹ On January 31, 2018, the Court received a letter from non-party Taquesha Jackson asking the Court to direct the Queens County Clerk to cancel the notice of pendency filed in this case against a property she owns located at 137-55 Bedell Street, Springfield Gardens, New York. (Jackson Ltr. (Doc. No. 42) at 1.) Jackson is

¹ The three notices of pendency as filed on the docket in this Court are attached to this Memorandum and Order.

currently in foreclosure proceedings and is unable to sell the property due to the notice of pendency.² (*Id.* at 2.)

For the reasons set forth below, this Court hereby ORDERS that each of the notices of pendency attached to this Order are CANCELLED, including the notice of pendency that includes Ms. Jackson's property.

DISCUSSION

Article 65 of the N.Y. Civil Practice Law and Rules allows a plaintiff, who brings a lawsuit claiming interest in real property, to file a notice of pendency (also called a "*lis pendens*"), which alerts future buyers or interest holders of a prior claim to a pending lawsuit that may affect title to that property. N.Y. C.P.L.R. §§ 6501–6516; *see also Diaz v. Paterson*, 547 F.3d 88, 90–91 (2d Cir. 2008) (describing New York law governing notices of pendency). The notice may be filed only "[i]n an action in which the plaintiff asserts a pre-existing interest in defendant's real property" and "prevents a potential transferee or mortgagee of the property from acquiring the status of innocent purchaser for value while the action is pending." Alexander, Practice Commentary, McKinney's, N.Y. C.P.L.R. § 6501. It must be "filed in the office of the clerk of any county where property affected is situated." N.Y. C.P.L.R. § 6511. The notice is a unique provisional remedy in that it permits a plaintiff, albeit in a narrow set of cases, to "file without advance notice or prior judicial review." *Diaz v. Paterson*, 547 F.3d at 91 (internal quotation marks omitted). "Where a notice of pendency of action is filed in a county clerk's office, but the action is brought in the United States Court, the application to cancel should be brought in the United States court and not in the state court." *Frederick v. Baxter Arms Corp.*,

² The Queens County Supreme Court has already vacated a fraudulent deed filed against this property, which purported to convey title from Jackson to A Fi Wi Lan-Ting Trust, with Johnson listed as trustee. (Jackson Ltr.at 5.) However, the notice of pendency filed in this habeas case remains.

39 F. Supp. 609, 610 (E.D.N.Y. 1941); *see also* N.Y. C.P.L.R. § 6514; *Cayuga Indian Nation v. Fox*, 544 F. Supp. 542, 548–49 (N.D.N.Y. 1982) (finding that the federal court was the proper forum for challenges to the notices of pendency).

In the instant matter, all of the notices of pendency filed by Johnson, including that related to Jackson’s property, are invalid. In his federal action, Johnson sought relief pursuant to a writ of habeas corpus pursuant to 28 U.S.C. § 2254 seeking to be released from custody in connection with a then-pending criminal action in Queens County. The relief sought by Johnson in the underlying action is wholly unrelated to any right, title or interest in property that could be asserted through the provisional remedies available through Article 65 of the CPLR. Moreover, the underlying action has been dismissed, which mandates cancellation of a notice of pendency. *See* N.Y. C.P.L.R. § 6514(a) (“Mandatory cancellation: The court, upon motion . . . shall direct any county clerk to cancel a notice of pendency . . . if the action has been settled, discontinued or abated . . .”); *see also Adams v. Smith*, No. 07-CV-0452 (LEK) (RFT), 2010 U.S. Dist. LEXIS 90729, at *65 (N.D.N.Y. Sept. 1, 2010) (vacating notices of pendency where the underlying action has been dismissed).

CONCLUSION

For the reasons stated herein, the Court hereby ORDERS that each of the notices of pendency attached to this Order and filed in this action at Document Numbers 29, 30, and 31, are CANCELLED, and further directs that the County Clerks of Queens, Kings, and Bronx Counties take the necessary steps to reflect this Court’s cancellation of such notices in the records of their respective offices.

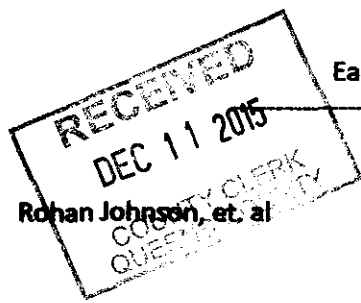
The Clerk of this Court is directed to send a copy of this Memorandum and Order to petitioner Rohan Johnson at the address listed for him on the docket, and note the mailing on the docket.

SO ORDERED.

Dated: Brooklyn, New York
February 12, 2018

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge



district court for the united states
Eastern District of New York – administrative venue

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

DEC 17 2015 ★

LONG ISLAND OFFICE

Rohan Johnson, et. al

Claimant

Robert N. Daveron Complex, et. al,

Respondent

~Joinder-claim~

Cause No.: 15-cv-00890 (RRM)
related index: 704045/2014
638478/17205
10159/08
18778/13

NOTICE OF PENDENCY

28 U.S.C. 1964/CPLR 6501

**THE BANK OF NEW YORK MELLON,
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE,
OCWEN LOAN SERVICING, LLC,
GREEN STONE HOMES, LLC,
FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER,
STATE OF NEW YORK, CITY OF NEW YORK, EAST COAST PROPERTIES AND
DEVELOPMENT GROUP INC.,
BAYPORT FUNDING, LLC, MOGAL ENTERPRISES INC,
EASTERN SAVINGS BANK, FLUSHING BANK, 8702 MANAGEMENT, LLC.
ELIZABETH GILL, ESQ., REFEREE,
WELLS FARGO BANK, NATIONAL ASSOCIATION,
SELENE FINANCE. LP, SRMOF 2009-1 TRUST, ET. AL**

**AND ALL OTHER PARTIES OF INTEREST,
1-50 JOHN and JANE DOES,**

Libellees

TO: Queens county clerk;

The clerk of Queens County is directed to Index this Notice to the names of the Respondents/libellees and property/land above:

NOTICE IS HERE BY GIVEN that an action has been commenced and is now pending in the above-captioned Court upon the claim and demand of the above-named petitioner/claimant(s), ROHAN JOHNSON A/K/A: (a fiwi lan-ting trust), and against the above-named Respondent(s)/Libellees for a judgment (1) enjoining the use of the property (Land); (2) directing the restoration of the grades thereof to the extent that the court shall deem necessary and (3) impressing a lien as of the commencement of this action upon the property upon the property (Land) to assure the performance of the acts and things directed or required by this court to be done by the Respondent(s)/Libellees and that the real property in Queens County affected thereby is particularly described as: All that certain Plot, Piece or Parcel of Land with the Buildings and Valuable improvements Structurally Sound and Water Tight, thereon erected, situated, lying, resting and being in Queens County and New York

Territories and Possessions of the united states (nalogous) and filed in the office of the Clerk of Queens county as: real property/allodial-land described as:

Sec: Lot: BLK:

**Xxx 009 9801 – [89-25] 168 street (road) Jamaica, New York state Republic
(Reference CRFN # 2013000201414)**

Xxx 0018 13022 – [137-55] Bedell street (road) Springfield Gardens, New York state Republic (Reference CRFN # 2012000386050)

Xxx 004 12305 – [157-12] 137 Avenue (road) Springfield Gardens, New York state Republic (Reference CRFN # 2014000019790).

Xxx 036 9946 – [85-24] Radnor street (road) Jamaica, New York state Republic (Reference CRFN# 2012000418533)

XXX 138 16121 –[87-02] Rockaway Beach Boulevard (road) Far Rockaway, New York state Republic (Reference CRFN# 2013000127384)

Xxx 130 12152 – [109-07] Union Hall (road) Jamaica, New York state Republic (Reference CRFN#2013000117541)

With each and every part of the land shown thereon.

Date: 09 December 2015 (A.D.)

Affirmed and sealed by the free act of my own hand this 10th December 2015 (AD)
Without the United States, without prejudice.

I am

By:

**Noble El, UCC1-308
Authorized Representative
C/O: Johnson
General Post 311315
Jamaica, New York [111431]**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ **DEC 17 2015** ★

district court for the united states
Eastern District of New York – administrative venue

LONG ISLAND OFFICE

Rohan Johnson, et. al

Claimant

Robert N. Daveron Complex, et. al,

Respondent

~Joinder-claim~

**THE BANK OF NEW YORK MELLON,
GREENPOINT MORTGAGE FUNDING, INC.,
HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE,
FREMONT INVESTMENT & LOAN,
METLIFE HOME LOANS,
U.S. BANK, N.A., WATERFALL VICTORIA MASTER FUND 2008-1, KEY BANK, N.A.,
CHAMPION MORTGAGE, CALIBER HOME LOANS, INC.
OCWEN LOAN SERVICING, LLC,
EASTERN SAVINGS BANK, FSB, KRISS & FEUERSTEIN LL, MERS, MAKOVER, EINAV,
ET. AL**

**AND ALL OTHER PARTIES OF INTEREST,
1-50 JOHN and JANE DOES,**

Libellees

TO: kings county clerk;

The clerk of Kings County is directed to Index this Notice to the names of the Respondents/libellees and property/land above:

NOTICE IS HERE BY GIVEN that an action has been commenced and is now pending in the above-captioned Court upon the claim and demand of the above-named petitioner/claimant(s), ROHAN JOHNSON A/K/A: (a fiwi lan-ting trust), and against the above-named Respondent(s)/Libellees for a judgment (1) enjoining the use of the property (Land); (2) directing the restoration of the grades thereof to the extent that the court shall deem necessary and (3) impressing a lien as of the commencement of this action upon the property (Land) to assure the performance of the acts and things directed or required by this court to be done by the Respondent(s)/Libellees and that the real property in Kings County affected thereby is particularly described as: All that certain Plot, Piece or Parcel of Land with the Buildings and Valuable improvements Structurally Sound and Water Tight, thereon erected, situated, lying, resting and being in Kings County and New York Territories and Possessions of the united states (nalogous) and filed in the office of the Clerk of kings county as: real property/allodial-land described as:

RECEIVED

DEC 14 2015

Cause No.: 15-cv-00890

related Index:

NOTICE OF PENDENCY

8 u.s.c 1964/CPLR 6501

(RA) (RRM)
12589/08
39016/07
20659/10 (RA)
14391/14
3492/13 20748
24211/26
9936/20
30611/10

Sec: Lot: BLK:

Xxx 044 5036 - [1142] Nostrand Avenue (road) Brooklyn New York state
Xxx 006 7744 -[1714] Albany Avenue (road) Brooklyn, New York state Republic
Xxx 048 4778 - [4701] Foster Avenue (road) Brooklyn, New York state Republic
(Reference CRFN # 2013000423854).
Xxx 017 1220 - [1106] Bergen street (road) Brooklyn, New York state Republic
XXX 020 8141 -[1047] Remsen Avenue (road) Brooklyn, New York state Republic
Xxx 054 8268 - [1234] East 104 street (road) Brooklyn, New York state Republic
Xxx 059 8301 - [1442] East 99 street (road) Brooklyn, New York state Republic
Xxx 064 8009 - [760] East 89 street (road) Brooklyn, New York state Republic
Xxx 027 1826 - [460] Madison street (road) Brooklyn, New York state Republic

With each and every part of the land shown thereon.

Date: 09 December 2015 (A.D.)

Affirmed and sealed by the free act of my own hand this 13 day of December 2015 (A.D.)
Without the United States, without prejudice.

I am

By:    

Noble El, UCC1-308
Authorized Representative
C/O: Johnson
General Post 311315
Jamaica, New York [111431]

Sworn to before me on 14 day of December, 2015



CHARLES OLIVER RITZ

Certified, true and correct copy
[Signature] 1/11/16

district court for the united states
Eastern District of New York – administrative venue

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

JAN 11 2016

LONG ISLAND OFFICE

Rohan Johnson, et. al

Claimant

Cause No.: 15-cv-00890 RRM
related Index : 35130/2012
15-cv-5674(gbd)

Robert N. Daveoren Complex, et. al,

Respondent

~Joinder-claim~

NOTICE OF PENDENCY

28 u.s.c 1964/CPLR 6501

DORAL BANK,
419 E 142ND ST., LLC,
GERALD L. SHEIOWITZ, ESQ., REFEREE,, ET. AL

AND ALL OTHER PARTIES OF INTEREST,
1-50 JOHN and JANE DOES,

Libellees

TO: Bronx county clerk;

The clerk of Bronx County is directed to Index this Notice to the names of the respondents/libellees and property/land above:

NOTICE IS HERE BY GIVEN that an action has been commenced and is now pending in the above-captioned Court upon the claim and demand of the above-named petitioner/claimant(s), Rohan Johnson, A/K/A: (a fiwi lan-ting trust), and against the above-named Respondent(s)/Libellees for a judgment (1) enjoining the use of the property (Land); (2) directing the restoration of the grades thereof to the extent that the court shall deem necessary and (3) Impressing a lien as of the commencement of this action upon the property (Land) to assure the performance of the acts and things directed or required by this court to be done by the Respondent(s)/Libellees and that the real property in Bronx county affected thereby is particularly described as: All that certain Plot, Piece or Parcel of Land with the Buildings and Valuable improvements Structurally Sound and Water Tight, thereon erected, situated, lying, resting and being in Bronx County and New York Territories and Possessions of the united states (nalogous) and filed in the office of the Clerk of Bronx county as real property/allodial-land described as:

Sec: Lot: BLK:
Xxx 83 2287 - [419] East 142 street (road) Bronx, New York state Republic (Reference CRFN #
2013000348058)

2016 JAN -7 PM 3:05
COUNTY CLERK
BRONX COUNTY
DOCKET DEPARTMENT

DOCKETED

With each and every part of the land shown thereon.

Date: 09 December 2015 (A.D.)

Affirmed and sealed by the free act of my own hand this 9th day of December 2015.
Without the United States, without prejudice.

I am

By: [Signature] GO
W/P

Noble El, UCC1-308
Authorized Representative
C/O: Johnson
General Post 311315
Jamaica, New York [111431]

2016 JAN - 7 PM 3:05
COUNTY CLERK
BRONX COUNTY
DOCKET DEPARTMENT

DOCKETED